of profits to an extreme degree.[14] The contract was one of agency for the sale of automobiles in a certain district. The contract was broken by the principal before any sales had been made by the agent. Nevertheless the latter was allowed to recover for loss of possible profits. Standards pointed out to aid the jury in arriving at the damages were the sales made by the defendant in the same district subsequent to the breach of this contract, and sales of other cars made by the plaintiff. Attention was called to the growth of the industry and the increased demand for motor driven vehicles. There is lacking, however, one important element: past profits earned under prior contracts or under the contract in question before it was broken. It is true that past profits are said to be too unreliable to warrant an attempt to assess damages for loss of future profits.[15] Nevertheless, they are invariably cited by the appellate courts as being of considerable importance in determining the proper damages. For this reason, *i. e.* that the element of past profits is lacking in the case given above, it would seem from remarks made in one case that loss of profits under these circumstances would not be included in the damages, even in those jurisdictions where it could ordinarily be recovered.[16] Another case involving the same situation is flatly contrary, but its jurisdiction takes a contrary view on the general question.[17]

It is interesting to note that in another Massachusetts case on facts quite similar, except that it was the agent who broke the contract, the principal was denied recovery of damages for the loss of future profits on the ground that they were too remote and too contingent.[18]

J. S. B.

FOREIGN CORPORATIONS—PERSONAL LIABILITY OF AGENT ACTING FOR UNREGISTERED CORPORATION—Under the Pennsylvania Act of Assembly of 1874,[1] a foreign corporation is required to establish an office in the state, with an appointed agent, and also t register with the Secretary of the Commonwealth, before it may transact any business. The Act provides a punishment in the way of fine and imprisonment for anyone who undertakes to act as agent for such a corporation before it has registered. There is no mention of civil liability of the agent in the statute, but the Pennsylvania courts have decided that he is personally

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[14] Randall v. Peerless Motor Car Co., 99 N. E. Rep. 221 (Mass., 1912).
[15] Sutherland on Damages (3d edition), Vol. 1, Section 69.
[16] 7 S. D. 247 (1895).
[17] 78 Ala. 243 (1887).
[18] Hetherington & Sons v. Firth & Co., 210 Mass. 821 (1911).

[1] Act of April 22, 1874, P. L. 108 (Pa.).

liable to the same extent that the corporation itself would have been, had it been properly registered.[2]

It is clear that a state may make a statute such as this. In the words of Mr. Justice McCollum in the leading case of *Lasher* v. *Stimson*:[3] "The right of the state to dictate the terms on which a foreign corporation shall be permitted to transact business within its jurisdiction cannot be doubted, if the conditions imposed are not repugnant to the Constitution of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence."[4]

But when the state has once imposed the conditions under which it will allow the foreign corporation to come within its jurisdiction, should the courts, by judicial legislation, be allowed to add whatever further penalties they see fit? The Pennsylvania courts evidently think they have that power, for in addition to the criminal liability imposed by the Act itself, the Supreme Court of Pennsylvania has added the personal, civil liability of the agent. The line of reasoning by which this new liability is found, is logical enough. The steps are,—first, the corporation, not having the legal sanction of the state to operate within it, has no existence at all within that state; second, the corporation being non-existent, the agent who undertakes to act for such a principal, must himself be liable.[5] Admitting that the result is strictly legal, its expediency is at least questionable. The injured party had never intended to look to the agent for redress in case of loss. It was the principal corporation that he had in mind in concluding the contract, and he should have taken steps, in protecting himself, toward ascertaining that the principal existed in legal contemplation. That many states have taken this view of the matter is shown by the fact that they have incorporated express provisions in their statutes imposing liability on the agent in such a case.[6] There is even some direct authority *contra* to the Pennsylvania decision on a similar statute.[7]

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[2] Raff v. Isman, 84 Atl. Rep. 352 (Pa., 1912), reaffirming Lasher v. Stimson, 145 Pa. 30 (1891). In the Raff v. Isman case, the defendant signed a building contract "as agent for Hepner Hair Emporium Co.," an unregistered corporation. He was held personally liable for the unpaid balance of the contract price.

[3] 145 Pa. 30 (1891), at p. 34.

[4] See Lafayette Ins. Co. v. French, 18 Howard 404 (U. S. S. C., 1855).

[5] Kroeger v. Pitcairn, 101 Pa. 311 (1882); McConn v. Lady, 10 W. N. C. 493 (Pa., 1881). The English law is clear that where a corporation, not having the power to do a certain act, authorizes an agent to perform that act and he does it, the agent is personally liable. Commercial Bank v. Kitson, L. R. 12 Q. B. D. 157 (1883). Agent is also personally liable on an implied contract where he wilfully represents that he has certain authority which, in fact, he has not. Randell v. Trimen, 18 C. B. 786 (1856).

[6] Texas Rev. St., Arts. 3093, 3095; Virginia Code, Sect. 1105; Minnesota Code, Sect. 87.

[7] Jones v. Horn, 78 S. W. Rep. 638 (Mo., 1904) and cases there cited.

A more equitable solution of the problem than that reached in the Pennsylvania courts would be to make the contract voidable at the election of the other contracting party, but not wholly void. Some western jurisdictions have adopted this expedient.[8] The Wisconsin statute covering this point is practical and rational. It provides that "every contract made by or on behalf of any such (foreign) corporation . . . affecting the personal liability thereof or relating to property within this state, before it shall have complied with the provisions of this section (requiring registration, etc.), shall be wholly *void on its behalf* . . ., but shall be *enforceable against it.*"[9] Thus, although the foreign corporation is not recognized as a legal entity within the state, yet its contracts can be enforced against it in the courts of that state. The plaintiff also has the further remedy, if he wants to make use of it, of going into the courts of the corporation's home state and there suing it, contract actions being transitory. A corporation, like a natural person, is suable *in personam* in any state into which it migrates and settles, and in which service of process can be lawfully had upon it under the governing statutes.[10]

In view of the fact that nearly all the state statutes prohibit foreign corporations from "doing or carrying on business within the state," unless they have complied with the conditions imposed by the statute, it is interesting to note what constitutes "doing business" in violation of such prohibitions. It is almost universally conceded that isolated transactions between a foreign corporation and the citizens of a state are not a doing of business within the state by the foreign corporation.[11] A few illustrations of such isolated transactions are, receiving subscriptions for a newspaper published in another state;[12] purchasing a piece of real estate;[13] taking security for debts due the corporation;[14] making a single sale or contract for the sale of goods.[15] These statutory prohibitions cannot, of course, interfere with or restrict the freedom of interstate commerce nor conflict with the settled interpretation of the commerce clause of the Federal Constitution.[16]

J. F. N.

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[8] Ames v. Kruzner, 1 Alaska 58 (1902); Insurance Co. v. Winne, 20 Mont. 20 (1897).

[9] Wisconsin Statutes 1898, sect. 1770 b, as amended by Laws of 1899, ch. 351.

[10] See 19 Cyc. 1326 and cases there cited under note 69.

[11] Delaware River Quarry Co. v. Passenger Ry. Co., 204 Pa. 22 (1902); Canal Co. v. Mahlenbrock, 63 N. J. L. 281 (1899); Schillinger v. Brewing Co. 107 Ill. App. 335 (1903).

[12] Beard v. Publishing Co., 71 Ala. 60 (1881).

[13] Louisville Property Co. v. Nashville, 84 S. W. Rep. 810 (Tenn., 1905).

[14] Insurance Co. v. Sawyer, 44 Wis. 387 (1878).

[15] Canal Co. v. Mahlenbrock, 63 N. J. L. 281 (1899); Wile v. Onsel, 10 Pa. Co. Rep. 659 (1891).

[16] Cooper Manuf. Co. v. Ferguson, 113 U. S. 727 (1889).